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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/07  
 LAST UPDATED 3/14/07      HB \_\_\_\_\_

SPONSOR Sanchez, B.

SHORT TITLE Land Grant Possession Claim Protections      SB 239/aSJC/aHJC

ANALYST Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Office of the Attorney General (OAG)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment adds the provision that land grants governed as political subdivisions pursuant to the general land grant statutory provisions shall not be subject to adverse possession claims or defenses against the common land grant lands provided these claims or defenses have not vested prior to the effective date of this bill.

The amendment also cleans up a technical error.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 239 repeals an 1863 section of law allowing individuals who have a title from Mexico or Spain to keep the land if they have legal possession and have had without interruption since the United States took control.

Synopsis of Original Bill

Senate Bill 239 provides that land grants governed as political subdivisions pursuant to the general land grant statutory provisions shall not be subject to adverse possession claims or defenses against the common land grant lands.

The bill repeals NMSA Section 37-1-21 which grants the right of continued possession to land grant property if possessed for ten years or more and certain requirements relating to “ouster”, or changing permissive use to adverse use are met.

**FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

**SIGNIFICANT ISSUES**

The OAG believes this bill is in response to a dispute between the Tecolote Land Grant and the Griegos which was resolved by the New Mexico Court of Appeals in November, 2004. In this case, the land grant sued the Griegos for being ejected and trespass. The Griegos argued they had obtained title to the land at issue through adverse possession. The District Court ruled in favor of the Griegos, but the Court of Appeals reversed that decision. However, the Appellate Court found that title by adverse possession can be lawfully acquired and established as to the communal land grant. However, the appellate court found that the Griegos did not meet the “ouster” requirements of that section. This bill will repeal that section and will prohibit claims or defenses of adverse possession as they relate to property held by certain land grants.

However, certain land grants are not governed by Sections 49-1-1 to 49-1-18 and those laws do not apply to them. NMSA Section 49-1-2. Those land grants, which include the Tecolote Land Grant, are governed by specific state laws. Even if the bill is enacted and NMSA Section 37-1-21 is repealed, it may not protect those land grants from adverse possession claims or defenses brought under the general adverse possession statute, NMSA Section 37-1-22.

DW/nt